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96TH CONGRESS
2d Session
SENATE
EXECUTIVE
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TREATY WITH THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY

COMPLETED

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS, SIGNED AT RAROTONGA JUNE 11, 1980

SEPTEMBER 3, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
59-118 O WASHINGTON : 1980

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 2, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate, the Treaty between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

This treaty is necessary to delimit the continental shelf and overlapping claims of jurisdiction resulting from the establishment of a 200 nautical mile fishery conservation zone off the coasts of American Samoa in accordance with the Fishery Conservation and Management Act of 1976, and the establishment of a 200 nautical mile zone by the Cook Islands.

In this connection, the status of four islands has also been resolved.

The treaty satisfies the interest of the people of the Cook Islands that their claim to sovereignty over these four islands, inhabited by citizens of the Cook Islands and represented in the legislative and administrative branches of the Cook Islands Government, will not be encumbered by a conflicting and largely unsupported claim by the United States. The treaty meets the United States interest in securing a maritime boundary in accordance with equitable principles. It furthers U.S. foreign policy interests in the area by establishing a basis for friendly relations with the Cook Islands and by furthering our interest in a peaceful, secure, and stable South Pacific.

I am transmitting for the information of the Senate a diplomatic note from the Government of New Zealand confirming that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to its doing so and a separate exchange of letters between the United States and the Cook Islands, signed on June 11, 1980, setting forth the understanding of each side that U.S. flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred on a discriminatory basis from seeking licenses to fish in the Cook Islands' 200 mile zone.

I recommend that the Senate give early consideration to the treaty and give its advice and consent to ratification.

JIMMY CARTER.

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LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 25, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to the transmittal thereof to the Senate for its advice and consent to ratification, the Treaty between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands, signed at Rarotonga June 11, 1980. The treaty establishes the maritime boundary between the United States off the coast of American Samoa and the Cook Islands, and it resolves the status of four islands in the Northern Cook Islands.

The establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States, including American Samoa, pursuant to the Fishery Conservation and Management Act of 1976, and of a 200 nautical mile zone off the coasts of the Cook Islands, created the need for agreement on a maritime boundary in order to avoid enforcement problems and to provide for certainty in the development of resources in the area where such 200 nautical mile zones overlap.

In connection with establishing the maritime boundary it was necessary to address and resolve the issue of the sovereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga, and Penrhyn. The U.S. claims to these particular islands arises out of occasional 19th century visits to the islands by American whalers, and by execution of guano bonds under the Guano Islands Act of 1856. The U.S. claim has virtually no legal merit and is not supported by any other nation. The United States has never exercised governmental jurisdiction over these islands. They were first administered by Great Britain and then placed under the administration of New Zealand in 1901. The islands are inhabited. These islands and these people have historically been an integral part of the Cook Islands and are represented in the Cook Islands Government. Continued assertion of these claims is inconsistent with the U.S. interest of maintaining friendly relations with the peoples of the South Pacific.

Another matter which had to be addressed in connection with this treaty is the political status of the Cook Islands Government. The Cook Islands is in free association with New Zealand. It is internally self governing, and it may unilaterally declare its independence from New Zealand at any time. It exercises its foreign affairs competence in conjunction with New Zealand. It declared and does manage its 200 nautical mile zone. In this regard, it was necessary to address the question of whether it was legally possible for the United States to

enter into a treaty relationship with a political entity other than a fully sovereign state.

After internal analysis, which included a review of the organic documents establishing the Cook Islands Government and of historical precedents, we concluded that the only limitation on the foreign affairs capacity of the Cook Islands Government existed in favor of New Zealand. We requested and received confirmation from the Government of New Zealand that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to its so doing. The diplomatic note of the Government of New Zealand concerning this matter is attached. I recommend that it be transmitted to the Senate for its information.

Officials met in Rarotonga October 12–14, 1979 to begin negotiations. A representative of the Government of American Samoa participated as a member of the U.S. delegation to these talks. A draft agreement was negotiated at that time. Thereafter, the geographic coordinates of the maritime boundary were established through diplomatic channels. The treaty was signed on June 11, 1980 on the occasion of the first visit by a U.S. Ambassador to the Cook Islands.

The operative portion of the treaty consists of seven articles.

Article I sets out the specific geographic coordinates which define the maritime boundary. This boundary is approximately 566.4 nautical miles in length, and consists of 24 segments. At its closest point it is 119.6 nautical miles from the nearest American Samoa island. This is a negotiated maritime boundary developed on the basis of principles deemed by the parties to be equitable in view of the relevant geographic circumstances.

Article II sets out the geodetic and computational bases used for describing the boundary, including the particular charts from which calculations were made in establishing the boundary.

Article III describes the legal effect of the maritime boundary. It provides that the Cook Islands shall not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil on the United States side of the boundary and, that on the Cook Islands' side of the boundary, the United States will not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil.

Article IV is a disclaimer provision which makes clear that agreement on the maritime boundary does not constitute recognition of the jurisdiction that the other party may claim to exercise in the delimited area beyond that otherwise recognized by each party to the treaty. In this connection the United States and the Cook Islands maintain different positions concerning the breadth of the territorial sea and the nature of jurisdiction that may be exercised within the 200 nautical mile zone. Article IV is intended to preserve the respective positions of each party.

Article V is an express statement that the United States by virtue of this treaty recognizes the sovereignty of the Cook Islands over the islands of Penrhyn, Pukapuka (Danger), Manihiki and Rakahanga.

Article VI is a general cooperation provision. It is in the U.S. interest to develop a close, friendly and cooperative relationship with the Cook Islands by promoting direct government to government contacts and in particular by promoting contacts between American Samoa and the Cook Islands.

Article VI provides that the English language text is the official treaty text and that the treaty will enter into force on the date of the exchange of instruments of ratification.

In connection with the negotiation of the treaty, discussions took place relating to the fishefy resources within the Cook Islands' 200 nautical mile zone. The attached letters set forth the positions and the understandings of the two sides. The United States sought and received assurances that U.S. flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred on a discriminatory basis from seeking licenses to fish in the Cook Islands' 200 mile zone. I recommend that this separate exchange of letters be transmitted to the Senate for its information.

I recommend that this treaty be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

WARREN CHRISTOPHER.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

The two governments,

Desiring to strengthen the existing bonds of friendship between their countries and in particular between the peoples of the Cook Islands and American Samoa,

Noting the Territorial Sea and Exclusive Economic Zone Act 1977 of the Cook Islands,

Noting the Fishery Conservation and Management Act of 1976 of the United States of America,

Desiring to establish a maritime boundary between the United States of America and the Cook Islands,

Noting that the United States of America has maintained a claim to seyereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga and Penrhyn,

Noting further that this claim has not been recognized by the Cook Islands,

Have agreed as follows:

ARTICLE I

The maritime boundary between the United States of America and the Cook Islands shall be determined by the geodetic lines connecting the following coordinates:

Latitude (South)	Longitude (West)
17°33′28″	166°38′35″
16°45′30″	166°01′39″
16°23′29″	165°45′11″
16°18′30″	165°41′29″
16°08′42″	165°34′12″
15°44′58″	165°13′36″
15°38′47″	165°12′03″
15°14′04″	165°18′29″
15°00′09″	165°22′07″
14°03′30″	165°37′20″
13°44′56″	165°58′44″
13°35′44″	166°09′19″
13°21′25″	166°25′42″
13°14′03″	166°34′03″
13°11′25″	166°37′02″
12°57′51″	166°52′21″
12°41′22″	167°11′01″
12°28′40″	167°25′20″
12°01′55″	168°10′24″
11°43′53″	168°27′58″
11°02′40″	168°29′21″
10°52′31″	168°29′42″
10°12′49″	168°31′02″
10°12′44″	168°31′02″
10°01′26″	168°31′25″

Article II

The geodetic and computational bases used are the World Geodetic System, 1972 (WGS 72) and the following charts and aerial plans:

Rose Island—U.S. Chart Nos. 83484, 6th ed., March 26/77, 1:80,000—local datum;

Manua Islands—U.S. Chart Nos. 83484, 6th ed., March 26/77, 1:80,000—corrected for WGS 72, 1980;

Swains Island—U.S. Chart Nos. 83484, 6th ed., March 26/77, 1:40,000—astro datum 1939;

Palmerston Atoll—Aerial Plan No. 1036/8h (N.Z. Lands & Survey), 1:50,400, 1976—local datum;

Suwarrow (Suvorov) Atoll—Aerial Plan No. 1036/8E (N.Z. Lands & Survey), 1:50,400, 1975—local datum;

Nassau Island—Aerial Plan No. 1036/8B (N.Z. Lands & Survey), 1:148,000, 1974—local datum;

Pukapuka (Danger) Island—Aerial Plan No. 1036/8D (N.Z. Lands & Survey), 1:28,800, 1975—local datum;

Niue—British Admiralty Chart BA 968, 16th ed., March 1979, 1:150,000, corrections to 1979—local datum;

Fakaofo Atoll –Aerial Plan No. 1036/7C (N.Z. Lands & Survey), 1:18,000, 1974—local datum.

Article III

On the side of the maritime boundary adjacent to the Cook Islands, the United States of America shall not, and on the side of the maritime boundary adjacent to American Samoa the Cook Islands shall not, claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil.

Article IV

The maritime boundary established by this Treaty shall not affect or prejudice in any manner any government's position with respect to the rules of international law concerned with the exercise of jurisdiction over the waters or seabed and subsoil or any other matter relating to the law of the sea.

Article V

The United States of America recognizes the sovereignty of the Cook Islands over the islands of Penrhyn, Pukapuka (Danger), Manihiki and Rakahanga.

Article VI

The Government of the United States of America and the Government of the Cook Islands, in the spirit of peace and friendship existing between the two governments and peoples, agree to cooperate with a view to promoting social and economic development in the Cook Islands, and to work toward the advancement of the South Pacific region as a whole. To these ends, they shall promote discussions between their peoples and appropriate government entities, in particular between the peoples of the Cook Islands and American Samoa.

ARTICLE VII

This Treaty shall be subject to ratification and shall enter into force on the date of the exchange of instruments of ratification.

DONE in duplicate, in the English and Maori languages, of which English shall be the authentic text, at Rarotonga this eleventh day of June, 1980.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Anne C. Martindell

FOR THE GOVERNMENT OF THE COOK ISLANDS:

Thomas Davis

EMBASSY OF NEW ZEALAND,
Washington, D.C., January 31, 1980.

The Embassy of New Zealand presents its compliments to the Department of State and has the honour to refer to its Note of 1 November 1979 in which inter alia it was requested that the Government of New Zealand indicate its position with respect to the Cook Islands Government's competence to undertake all rights specified in the recently negotiated Treaty of Friendship and Maritime Boundary Delimitation with the Cook Islands and New Zealand, within the context of the free association relationship between the Cook Islands and New Zealand.

As indicated by the New Zealand delegation during the negotiations the New Zealand Government confirms the competence of the Cook Islands Government to undertake the obligations and exercise the rights under the draft treaty. The New Zealand Government therefore has no objection to the conclusion of the proposed treaty directly between the Government of the United States and the Government of the Cook Islands. The Embassy also wishes to advise that the New Zealand Government would not propose to have any role in the ratification of the treaty other than perhaps as a channel through which the instruments of ratification might be conveyed.

The Embassy of New Zealand takes this opportunity to renew to the Department of State the assurances of its highest consideration.

ASSISTANT SECRETARY OF STATE,
OCEANS AND INTERNATIONAL ENVIRONMENTAL
AND SCIENTIFIC AFFAIRS,
Washington, D.C., June 11, 1980.

MR. JAMES GOSSELIN,
Secretary of External Affairs,
Department of External Affairs,
Rarotonga, Cook Islands.

DEAR SIR: This is in reference to your letter of today's date concerning discussions between representatives of our two governments which took place October 17–19, 1979, in Rarotonga concerning matters

relating to the fishery resources within the 200-mile zone of the Cook Islands.

I understand the importance the Government of the Cook Islands attaches to the development of its fishery resources for the benefit of the people of the Cook Islands.

I appreciate the assurances contained in your letter. I also appreciate that the Cook Islands Government understands the concerns which we have expressed and that these concerns will be taken into account in the implementation of the policy set forth in your letter.

For our part, the Government of the United States of America fully intends to promote close cooperation between the Cook Islands authorities and United States flag vessel owners and operators. We will also be pleased to facilitate such cooperation between Cook Islands authorities and vessels supplying the canneries in American Samoa. We have transmitted a copy of your letter and this reply to the American Samoan authorities and would expect that they will take the same view.

Sincerely,

THOMAS R. PICKERING.

GOVERNMENT OF THE COOK ISLANDS,
DEPARTMENT OF EXTERNAL AFFAIRS,
Rarotonga, Cook Islands, June 11, 1980.

Mr. THOMAS R. PICKERING,
Assistant Secretary of State, Oceans and International Environmental and Scientific Affairs, Department of State, Washington, D.C.

DEAR SIR: I have the honour to refer to recent discussions between representatives of our two Governments which took place October 17–19, 1979, in Rarotonga concerning matters relating to the fisheries resources within the Cook Islands Exclusive Economic Zone, and to the information exchanged in the course of those talks.

I understand the importance attached by the people of American Samoa to seeing that third country vessels operating from American Samoa have continued access to the fisheries resources which they have fished in the past, including the fishery resources of the Cook Islands Exclusive Economic Zone. I also understand the desire on the part of the Government of the United States of America to ensure that its flag vessels which may desire to fish in the Cook Islands zone will be permitted to do so.

It is the policy of the Government of the Cook Islands to consider applications for fishery licenses in its Exclusive Economic Zone on a non-discriminatory basis without special regard for any particular country or its vessels. I can assure you that with respect to United States flag vessels or vessels supplying canneries in American Samoa, application for licenses to fish in the Cook Islands Exclusive Economic Zone will be treated in accordance with this policy.

The Government of the Cook Islands regards it as desirable to establish a cooperative relationship with United States flag vessels wishing to fish in the Cook Islands Zone and with the vessels supplying the canneries on American Samoa. We would therefore welcome discussions along these lines and would expect that the Government of the United States, as appropriate, would facilitate such cooperative relationships.

Yours sincerely,

JAMES GOSSELIN,
Secretary of External Affairs.

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